

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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19,912

SUBJECT: Clarification of §§122.7 and 122.10 requirements.
Ground-Water Program Guidance No. 21 (GWPG #21) UIC

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TO: Water Division Directors Regions I - X
Water Supply Branch Chiefs
UIC Representatives

PURPOSE

The litigants have asked clarification on how certain requirements contained in §122.7 and §122.10 can be interpreted for a UIC program. This guidance clarifies the intent of these requirements.

GUIDANCE

1. Twenty-four hour reporting

§122.7(1)(6) states that after an oral notice within 24 hours, a "written submission shall also be provided within 5 days" of a noncompliance which may endanger health or the environment. The submission "shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance."

For a UIC permit, noncompliance which may endanger health or the environment would most likely be due to a downhole problem. It is very unlikely that information will be available within 5 days beyond what will have been submitted in the 24 hour oral report. The 5 day written report should contain all relevant available information, but may be only a confirmation of the oral report if no information is yet available. In such a case the Director must require a follow-up report within 30 days containing all the information listed in §122.7(1)(6). If all information is still not available the Director must require that the operator submit it as soon as it becomes available. The authority to require such additional reports is contained in §122.7(h) and §122.7(1)(8).

2. Monitoring records

§122.7(j)(3) requires that records of monitoring information include among others "the individual(s) who performed the sampling or measurements," and "the individual(s) who performed the analyses," and that these records be retained by the permittee for 3 years from the date of the sample or measurement. The permittee is under no duty to submit these records unless the Director specifically requires him to do so.

In cases where the permittee contracts with an outside laboratory to perform the required analyses he must insure that these records will be available. One means to do so is by stipulating in the contract that the laboratory shall either retain for three years a record of the individuals who actually performed the sampling and analysis, or provide these records to the permittee along with the results of the analyses.

3. Alternative schedules of compliance

The regulations provide at §122.10(b) that a permit applicant or permittee may cease conducting regulated activities by plugging and abandonment of a well rather than continue to operate and meet permit requirements. The regulations also require at §122.10(b)(4) that this decision be evidenced by "a firm public commitment satisfactory to the Director" and cites a resolution of the board of directors of a corporation as an example of satisfactory commitment. This type of commitment however is not mandatory for UIC permits. For example, it may not be desirable in the case of Class II wells where the board of directors would be far removed from the day-to-day operation of the oil fields. The Director must decide and specify the type and level of commitment that will be satisfactory in a given case. At a minimum such a commitment appropriate to Class II wells would be a written commitment from the signatory to the permit application as defined in §122.6(a) or his duly authorized representative as defined in §122.6(b) and (c).

NOTE - There is a miscite in the regulations. §122.6(1) should read §122.6(a). A technical amendment will be issued to correct it.

IMPLEMENTATION

Regional offices are instructed to use this guidance in operating UIC programs where EPA has primary enforcement responsibility. They are further instructed to make this guidance available to States working towards primacy and to advise the State Director that these interpretations represent EPA policy.

FILING INSTRUCTIONS

This guidance should be filed as Ground-Water Program Guidance No. 21.

ACTION RESPONSIBILITY

For further information on this guidance contact:

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